

REMARKS/ARGUMENTS

Claims 23, 24, and 26-52 remain pending in the present application. The amendment to claims 23 and 24 clarifies that the “skin” layers are “outer” layers of the A/B/A structure claimed, and finds basis at paragraph [0056]. No new matter is added.

Claims 23, 29-30, 44-46 and 51-52 have been rejected under **35 U.S.C. § 103(a)** as obvious over U.S. Patent No. 5,520,972 to Ezaki et al. in view of U.S. Patent No. 6,476,171 to Lue et al. Applicants respectfully traverse this rejection and request reconsideration, since the references, even in combination, fail to disclose or suggest each and every claim limitation.

Applicants reiterate their comments in traverse of the rejection as submitted in their response mailed November 2, 2009. In short, the Examiner’s proposed combination of references requires a skilled artisan reading Ezaki et al. to laminate the A/B/A structure therein to form a structure A/B/A/A/B/A, such that layers A, which contain HDPE/LDPE could be considered “core” layers.

However, the Examiner’s proposal ignores the fact that upon such modification to Ezaki et al., the B layers, which contain LLDPE, would be intermediate layers and not “skin” layers, as claimed herein.

Applicants respectfully submit that the amendment submitted herewith clarifies that the “skin” layers A of the present invention are “outer” layers, i.e. surface layers. A full and fair reading of the present application would suggest nothing else to the skilled artisan:

As used herein, the term “skin layer” means that the layer is the outer layer of the structure. Thus, in a three-layer structure there are two skin layers and a core layer, sandwiched by the skin layers. This structure will be denoted A/B/A, wherein the A layer denotes a skin layer, corresponding to the second layer comprising mPE, above, and the B layer denotes the core layer, corresponding to the first layer described above. It will be recognized that the A layers do not need to be identical, however. (Paragraph [0056]; emphasis added).

In the Advisory Action issued November 25, 2009, the Examiner offers an explanation of his position, stating:

However, because the layering comprises two A layers between two B layers, and the B layers comprise 85 - 95% LLDPE the structure would have skin layers comprising 85 - 95% LLDPE, because each B layer would be a skin layer of the B/A/A/B layering that is comprised in the A/B/A/A/B/A layering. (Advisory Action, page 2; emphasis added).

While the PTO is permitted to interpret the claims broadly, such interpretation must be “reasonable” and take into consideration the meaning of claim terms as set forth in the specification.

“Claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their ‘broadest reasonable interpretation’.” *In re Marosi*, 710 F.2d 799, 802 (Fed. Cir. 1983), (quoting *In re Okuzawa*, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976)) (emphasis in original). The court looked to the specification to construe “essentially free of alkali metal” as including unavoidable levels of impurities but no more.). Compare *In re Weiss*, 989 F.2d 1202, 26 USPQ2d 1885 (Fed. Cir. 1993) (unpublished decision - cannot be cited as precedent) (The claim related to an athletic shoe with cleats that “break away at a preselected level of force” and thus prevent injury to the wearer. The examiner rejected the claims over prior art teaching athletic shoes with cleats not intended to break off and rationalized that the cleats would break away given a high enough force. The court reversed the rejection stating that when interpreting a claim term which is ambiguous, such as “a preselected level of force”, we must look to the specification for the meaning ascribed to that term by the inventor.” (Emphasis added). The specification had defined “preselected level of force” as that level of force at which the breaking away will prevent injury to the wearer during athletic exertion.) **MPEP 2111.01 (II).**

Applicants submit that the Examiner's interpretation of the present claim term "skin" to include an intermediate layer is entirely unreasonable in view of the present specification at paragraph [0056], quoted above.

Withdrawal of the rejection is requested on this basis alone.

Further, Applicants traverse the Examiner's interpretation of the cited reference teachings, and submit that the Examiner is impermissibly picking and choosing from the reference teachings only what suits the rejection.

It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. *In re Wesslau*, 147 USPQ 391, 393 (CCPA 1965).

One of skill in the art would not have read the Ezaki et al. reference teachings, even if modified in the manner suggested by the Examiner, to mean that the Ezaki et al. B layers would be "outer skin layers".

Further, even if the skilled artisan would have been motivated to make the changes in the Ezaki et al. reference suggested by the Examiner, the artisan would not have been motivated to eliminate the outer "skin" layers A of the proposed A/B/A/A/B/A Ezaki et al. structure in order to obtain the presently claimed invention.

The secondary reference to Lue et al. fails to cure the above-discussed deficiencies in the rejection. Withdrawal of the rejection is respectfully requested.

Claims 24, 26-28, 31-43 and 47-50 have been rejected under 35 U.S.C. § 103(a) as obvious over Ezaki et al. in view of Lue et al. and further in view of U.S. Patent Appl. Pub. No. 2001/0003624 to Lind et al. Applicants respectfully traverse this rejection and request reconsideration.

Applicants reiterate their remarks in traverse of the application of Ezaki et al. and Lue et al. as applied to the present claims, as set forth above.

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Reply to OA of September 17, 2009 and
Advisory Action dated November 25, 2009

Again, the secondary reference to Lind et al. fails to cure the underlying deficiencies of the combination of Ezaki et al. and Lue et al.

Withdrawal of the rejection and allowance of the claims is requested.

Applicants invite the Examiner to telephone the undersigned attorney, if there are any issues outstanding which have not been presented to the Examiner's satisfaction. If necessary to affect a timely response, this paper should be considered as a petition for Extension of Time sufficient to affect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1712 (Docket # 2003B101A-US).

Respectfully submitted,

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/Frank E. Reid/

Frank E. Reid
Attorney for Applicants
U.S. Reg. No.: 37,918

Attachments: Request for Continued Examination
Petition for Extension of Time

ExxonMobil Chemical Company
Law Technology
P.O. Box 2149
Baytown, Texas 77522-2149
(281) 834-1743 (Office)
(281) 834-2495 (facsimile)